

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.Government



June 17, 2022

Betty Donovanik
Community and Economic Development Director
City of El Monte
11333 Valley Boulevard
El Monte, CA 91731

Dear Ms. Donovanik:

RE: Review of El Monte's Accessory Dwelling Unit (ADU) Ordinance under ADU Law (Gov. Code, § 65852.2)

Thank you for submitting the City of El Monte's (City) accessory dwelling unit (ADU) ordinance, No. 2994, (Ordinance) adopted February 16, 2021, to the California Department of Housing and Community Development (HCD). The Ordinance was received on November 4, 2021. HCD has reviewed the Ordinance and is submitting these written findings pursuant to Government Code section 65852.2, subdivision (h). HCD has determined that the Ordinance does not comply with section 65852.2 in the manner noted below. Under the statute, the City has up to 30 days to respond to these findings. Accordingly, the City must provide a written response to these findings no later than July 17, 2022.

The adopted ADU ordinance addresses many statutory requirements, and HCD would like to commend El Monte for a particularly beneficial policy wherein the Ordinance allows two detached **and** an additional ADU (converted unit) within an existing multi-family unit of up to 25 percent of the existing units onsite. However, HCD finds that the Ordinance does not comply with State ADU Law in the following respects:

- Section 17.06.165 (C)(1) & (Z)(1)(a) – *Impermissible restriction* – The Ordinance currently prohibits junior ADUs (JADUs) from being built in combination with attached (or “internal”) ADUs. This is impermissible. Government Code section 65852.2, subdivision (e)(1)(A), states that single-family lots may have one ADU **and** one JADU. The City must correct the error to permit such a combination.
- Section 17.06.165 (C)(2) – *“Multifamily” definition* – The Ordinance states that “‘Multifamily structures’ shall mean a residential-only structure with three (3) or more attached units.” However, “[f]or the purposes of state ADU law, a structure with two or more attached dwellings on a single lot is considered a multifamily dwelling structure.” (ADU Handbook, p.22.) The City should revise this section.

- Section 17.06.165 (H)(2) and (H)(3) – *Impermissible subjective requirements* – The Ordinance requires that an ADU have “the appearance of a single-family dwelling and shall be integrated into the design of the existing primary dwelling unit on the property.” Government Code section 65852.2, subdivision (a)(4), states that “an existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units.” The requirements that an ADU must look like a single-family dwelling (whether or not it is built with a single-family dwelling as the primary dwelling on a lot), and that it be “integrated” into the design of the primary dwelling, are subjective and therefore violate state statute. Therefore, the City should remove this phrase from the section.
- Section 17.06.165 (H) (5) – *Syntax and impermissible restriction* – The Ordinance currently prohibits entry from facing the public right-of-way and requires that “the entrance shall be located on the side or rear of the primary dwelling and [sic] whenever possible.” However, local development standards provided by the Ordinance pursuant to Government Code section 65852.2, subdivisions (a) through (d), do not apply to ADUs created under Government Code section 65852.2, subdivision (e), and the restrictions as implied would not be permissible for such ADUs. Therefore, the City should revise or remove the section.
- Section 17.06.165 (H)(6) & (H)(7) – *Impermissible design standards in converted garages* – The Ordinance states that “for ADUs converted from a garage, the garage door must be removed and replaced with windows and/or other design features that are consistent with the overall architectural design of the ADU and the primary dwelling unit. In addition, a four (4) foot wide planter shall be installed between the ADU and any driveway.” However, local development standards provided by the Ordinance pursuant to Government Code section 65852.2, subdivisions (a) through (d), do not apply to ADUs created under Government Code section 65852.2, subdivision (e). The City, therefore, cannot require the removal of a garage door, nor the creation of an adjacent planter, since converted units are not subject to such local development standards. The City must remove the section from the Ordinance or clarify that this section includes suggestions, not requirements.
- Section 17.06.165 (H)(7) – *Impermissible entry restriction* – The Ordinance states that “for new ADUs attached to a garage, there shall be no direct access from the garage to the ADU.” However, Government Code section 65852.2, subdivision (a)(6)(A), states, “This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be

used.” Subdivision (a) does not address entry to other accessory structures. Therefore, this requirement exceeds statute and should be removed.

- Section 17.06.165 (K)(2), (K)(3) and (K)(4) – *Impermissible size restriction* – The Ordinance states that for a detached ADU, “the maximum square footage... shall not exceed fifty (50%) percent of the existing or proposed primary dwelling, provided that the minimum size for the detached ADU is at least 800 square feet for a studio or one (1) bedroom and at least 1,000 square feet for a detached ADU with two (2) bedrooms.” It also states that “the maximum square footage for an attached or detached ADU shall be eight hundred fifty square feet (850) for an ADU that is a studio or one (1) bedroom and at least 1,000 square feet (1000) for a detached ADU with two (2) bedrooms.” These requirements are confusing and internally inconsistent; for example, is a detached ADU’s maximum size 800 or 850 square feet? There are also some omissions from the Ordinance; for example, converted units are not addressed. Although it is not mandatory for an ordinance to cover all aspects of the statute, addressing these omissions would provide clarity and is recommended.

Furthermore, these maximums would not apply to ADUs created under Government Code section 65852.2, subdivision (e), as local development standards provided by the Ordinance pursuant to Government Code section 65852.2, subdivisions (a) through (d), do not apply to ADUs created under Government Code section 65852.2, subdivision (e). Therefore, for converted units, there would be no maximum size, and for a detached new construction ADU built with an existing or proposed single family home under subdivision (e)(1)(B), the maximum size, established in subdivision (e)(1)(B)(i), would be “[a] total floor area limitation of not more than 800 square feet.” Therefore, the statutory maximum sizes would be as follows:

- 800 square feet for a new construction detached ADU built with a single-family home under Government Code section 65852.2, subdivision (e). (Gov. Code, § 65852.2, subd. (e)(1)(B)(i).)
- 850 square feet for a studio or one bedroom unit built under Government Code section 65852.2, subdivision (a). (Gov. Code, § 65852.2, subd. (c)(2)(B)(i).)
- 1,000 square feet for an ADU that provides more than one bedroom built under Government Code section 65852.2, subdivision (a). (Gov. Code, § 65852.2, subd. (c)(2)(B)(ii).)
- No size limit for conversions of accessory structures. (Gov. Code, § 65852.2, subd. (e)(1)(A)(i).)

The City should reorganize and clarify these sections while addressing the omissions.

- Section 17.06.165 (K)(6) – *Bedroom restriction* – The Ordinance states that “unless otherwise limited by state law, an ADU shall not have more than two

bedrooms.” This is impermissible. Government Code section 65852.2, subdivision (a)(6)(A), states that “this subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be used or imposed.” Furthermore, Government Code section 65852.2, subdivision (c)(2)(B)(ii), establishes that a unit’s maximum size may be “1,000 square feet for an accessory dwelling unit that provides more than one bedroom.” There is no mention of an upper limit on bedrooms. Limiting the number of bedrooms within an ADU may constrain housing choice and result in discriminatory effects on families with children, people with disabilities, and other protected groups in violation of state and federal fair housing laws, including but not limited to Government Code section 65008, subdivisions (a)(1)(A) and (b)(1)(B)(i). Therefore, the City must revise this section to avoid limiting the occupancy of housing units based on familial status or other protected characteristics.

- Section 17.06.165 (L) – *Lot Coverage and Floor Area Ratio (FAR)* – The Ordinance states that “the roofed area shall be included in the maximum lot coverage.” This may be a constraint on the creation of ADUs, as including the roof area could limit the size of the ADU by consuming remaining buildable area on the site and thereby not allow a larger ADU. Therefore, the City should remove this section.
- Section 17.06.165 (O) – *Minimum separation & exception clause* – The Ordinance requires “a minimum ten (10) foot separation must be maintained between a detached ADU and single-family dwelling.” Local development standards provided by the Ordinance pursuant to Government Code section 65852.2, subdivisions (a) through (d), do not apply to ADUs created under Government Code section 65852.2, subdivision (e). Therefore, building separation requirements of any size cannot prohibit the construction of an 800 square-foot ADU subject to the terms of Government code section 65852.2, subdivision (e). The City should consider noting the exception and should consider a smaller building separation requirement.
- Section 17.06.165 (W) – *Separate conveyance* – The Ordinance currently prohibits the separate conveyance of an ADU or JADU. Government Code section 65852.26, subdivision (a)(1) (effective January 1, 2022), creates a narrow exception to allow separate conveyance of an ADU with the involvement of qualified nonprofit housing organizations. The City should refer to the Code section to allow for such an exception.

In these respects, revisions are necessary to comply with statute.

In response to the findings in this letter, and pursuant to Government Code section 65852.2, subdivision (h)(2)(B), the City must either amend the Ordinance to comply with State ADU Law or adopt the Ordinance without changes. Should the City choose to adopt the Ordinance without the changes specified by HCD, the City must include findings in its resolution that explain the reasons the City finds that the Ordinance complies with State

ADU Law despite the findings made by HCD. Accordingly, the City's response should provide a plan and timeline to bring the Ordinance into compliance.

Please note that, pursuant to Government Code section 65852.2, subdivision (h)(3)(A), if the City fails to take either course of action and bring the Ordinance into compliance with State ADU Law, HCD may notify the City and the California Office of the Attorney General that the City is in violation of State ADU Law.

HCD appreciates the City's efforts in the preparation and adoption of the Ordinance and welcomes the opportunity to assist the City in fully complying with State ADU Law. Please feel free to contact Mike Van Gorder, of our staff, at (916) 776-7541 or at mike.vangorder@hcd.ca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. Zisser", with a long horizontal flourish extending to the right.

David Zisser
Assistant Deputy Director
Local Government Relations and Accountability